

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3967 of 2007()

C.M.P. NO. 4764 OF 2007 OF J.F.C.M. V, KOZHIKODE

REVN. PETITIONER: PETITIONER

MANIKANDAN,S/O.N.K.LAKSHMANAN
NANJAPPA AGRAHARA, CHAMARAJPETTE, BANGALORE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

1. S.I.OF POLICE, NALLALAM POLICE
STATION.
2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C. M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26/11/2007, THE COURT ON 29/11/2007 PASSED THE
FOLLOWING:

“CR”

V. RAMKUMAR, J.

Crl. R.P. NO. 3967 of 2007

Dated: 29-11-2007

ORDER

The interesting question which arises for consideration in this revision is as to whether a person who is arrested by a police officer without a warrant under Section 41 (1) (d) Cr.P.C. on the reasonable suspicion that such person is in possession of stolen property or is reasonably suspected of having committed an offence with reference to such property, when produced before the Magistrate without anything more, is liable to be remanded to judicial custody ?

2. The revision petitioner is the accused in Crime No. 317 of 2007 of Nallalam Police Station. The said crime was registered at the instance of the Sub Inspector of Police, Nallalam. The Sub Inspector is said to have inspected the godown of the accused at Kolathara in Cheruvannur amsom on 31-10-2007 at 12.15 p.m. and is alleged to have found 300 kgms of alluminium wire. Suspecting that the alluminium wire belonged to and was used for drawing overhead lines by the Kerala State Electricity Board, the Sub Inspector seized the

alluminium wire under the reasonable belief that it was stolen property. The revision petitioner was also arrested and was produced before the J.F.C.M.I, Kozhikode on 31-10-2007 itself along with a remand report and the mahazar under which the alluminium wires were seized. The Sub Inspector also produced before the Magistrate the F.I.R. in Crime No. 317 of 2007 registered under Sec. 41(1)(d) read with Sec. 102 Cr.P.C.

3. On 31-10-2007 itself the learned Magistrate remanded the revision petitioner to judicial custody authorising his detention in the Sub Jail, Kozhikode for a period of 14 days by invoking the power under Section 167 (2) Cr.P.C. An application for bail filed by the revision petitioner as C.M.P. No. 4764 of 2007 was dismissed by the Magistrate on 2-11-2007 on the ground that it was too early to accept the photocopy of the bill dated 28-10-2007 produced by the accused showing that the alluminium wires were purchased by him under a valid bill and on the further ground that according to the police the revision petitioner was found in possession of the alluminium wires which were reasonably believed to be stolen property. It is at this stage that the revision petitioner approached this Court with this revision challenging the order remanding him

to judicial custody and the consequential order rejecting his bail application.

4. While the arrest of the revision petitioner by the Sub Inspector on the reasonable belief that the alluminium wires found in the godown of the revision petitioner were stolen property, could be justified under Sec. 41 (1) (d) Cr.P.C., I see absolutely no justification on the part of the Sub Inspector in registering a crime or seeking detention of the revision petitioner in judicial custody since the commission of a cognizable offence entitling the police officer to investigate under Sec. 156 Cr.P.C. was neither alleged nor made out. It is admitted that even as on today the Sub Inspector has not filed any report before the Magistrate to the effect that the revision petitioner had either committed theft of the alluminium wires in question or that he was a receiver of stolen property. When there was no allegation before the Magistrate to the effect that the revision petitioner had committed a cognizable or non-bailable offence, neither the police could forward the revision petitioner to the nearest Magistrate seeking authorisation for detention of the revision petitioner in police or judicial custody, nor could the Magistrate remand the revision petitioner to

police or judicial custody. The question of ordering detention under Section 167 Cr.P.C. will arise only if there is an investigation for which the alleged commission of an offence is a necessary pre-requisite. The position would have been different if the revision petitioner was produced before the Magistrate along with a further report to the effect that after the arrest of the revision petitioner on the requisite suspicion under Sec. 41(1)(d) Cr.P.C. it was made out that the revision petitioner had committed a cognizable or non-bailable offence. In the absence of any such report it was impermissible for the Magistrate to presume the commission of a cognizable or non-bailable offence.

5. It is only upon receiving a complaint of facts which constitute an offence or upon a police report of such facts or upon information received from any person other than a police officer or upon his own knowledge that an offence has been committed, can the Magistrate take cognizance of the offence. When the revision petitioner was arrested merely on suspicion under Sec. 41(1)(d) Cr.P.C. which does not amount to an offence, much less, a cognizable or non-bailable offence, there was absolutely no warrant for the Magistrate to order the

detention of the revision petitioner in judicial custody. In such a situation, if at all the Magistrate could make any assumption it could only be that no offence is made out against the revision petitioner and accordingly release him either on self bond or on sureties under Sec. 436 Cr.P.C.

6. The learned Magistrate was evidently drawing sustenance from the decision of a learned single judge of this Court in **Chakkappan and Others v. State of Kerala - 1960 KLT 460** wherein it was held that the arrest of a person under Sec. 151 Cr.P.C. need not necessarily be in connection with a case involving the actual commission of a cognizable offence, that the arrest may as well be under Section 151 Cr.P.C. in order to prevent the commission of a cognizable offence and that in case the investigation cannot be completed within a period of 24 hours, the Magistrate would be justified in remanding the accused to custody. But in the light of the subsequent authoritative pronouncement of the Apex court in **Ahammed Noor Mohammed Bhatti v. State of Gujrat - AIR 2005 SC 2115**, the legal position is that Sec. 151 Cr.P.C. only provides for the arrest of a person to prevent the commission of a cognizable offence by him and the person so arrested can be

detained in custody only upto 24 hours and in the absence of anything else, such person should be released by the arresting officer himself on the expiry of the said 24 hours. The Apex Court also held that before the expiry of 24 hours of the arrest of such person if it is found that such person is required to be detained under any other provisions of Cr.P.C. or any other law for the time being in force, then such person may not be released and his detention may continue under such law or such provision of the Code and that the detention thereafter is not under Sec. 151 Cr.P.C. but under the relevant provisions of the Code or any other law for the time being in force, as the case may be. If no offence is made against a person arrested under Section 151 Cr.P.C., there cannot be any investigation and consequently Section 167 Cr.P.C. cannot have any application so as to enable the Magistrate to remand the arrested person to custody.

7. Sec. 167 Cr.P.C. does not permit the Magistrate to remand an arrested person to custody merely as a matter of routine. The Magistrate must satisfy himself that a non-bailable offence appears to have been committed by the arrested person and that an investigation into such offence has commenced and that detention of the arrested person in custody is really

necessary. It is for arriving at the above satisfaction that a copy of the entries in the case diary maintained under Sec. 172 Cr.P.C. is forwarded to the Magistrate under Sec. 167 (1) Cr.P.C. . The duty of the Magistrate becomes all the more insistent in the case of a person who has been arrested on a mere suspicion under Sec. 41 (1) (d) Cr.P.C. The Magistrate has to be watchful since the power to arrest on suspicion under Section 41 (1) (d) Cr.P.C. without a warrant is liable to be abused by the police.

8. The legal position which emerges is that a person arrested under Sec. 41 (1)(d) or under Sec. 151 Cr.P.C. on mere suspicion cannot be said to be a person against whom the commission of a cognizable or non-bailable offence is alleged or made out and such person cannot, without anything more, be remanded to judicial custody. On the contrary, such person should be released on bail by invoking the power under Sec. 436 Cr.P.C. treating the case as a bailable one. But the position would be different, if after such arrest, there is material collected and produced before the Magistrate to indicate that such person has committed a cognizable or a non-bailable offence.

9. On the facts and circumstances of the case on hand, the learned Magistrate was not justified in rejecting the bail application of the accused, much less, in remanding the accused to judicial custody. Since consequent on the interim order passed by this Court the revision petitioner has been released on bail by the Magistrate no further question arises except to state the legal position as aforesaid.

This revision is accordingly disposed of as above.

**V. RAMKUMAR,
(JUDGE)**

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